

REMARKS

Claims 52-87 and 106-120 are pending. Claims 52, 65 and 106 are the only pending independent claims. Applicants hereby amend claims 52, 65 and 106 along with a number of dependent claims, and respectfully submit that none of the amended claims introduces new matter.

35 U.S.C. § 103 Rejections

The Office Action rejected various claims, including independent claims 52, 65 and 106, under 35 U.S.C. § 103 (“Section 103”) as obvious over a number of individual references. In particular, claims 52-54, 57-59, 61-68, 71-73, 75-79, 83, 85, 106-109, 111, 114-116 stand rejected under Section 103 as obvious over UK Pat. App. 2,306,429 to Allbrighton (hereinafter “Allbrighton”). Claims 52-55, 63-69, 106-109 and 112 stand rejected under Section 103 as obvious over U.S. Pat. No. 4,691,838 to Graham et al. (hereinafter “Graham”). Claims 52-54, 62-68, 76-79, and 106-111 stand rejected under Section 103 as obvious over U.S. Pat. No. 5,305,909 to Merritt (hereinafter “Merritt”).

In addition, the Office Action rejected a number of dependent claims under 35 U.S.C. § 103(a) (“Section 103”) as obvious in view of the prior art. Since, as explained below, Applicants’ dependent claims now all depend from allowable base independent claims, Applicants respectfully submit that addressing the obviousness rejections raised by the Office Action is unnecessary at this time.

With respect to amended independent claims 52 and 106, not one of Allbrighton, Graham, Burke or Merritt teach or suggest use of an “anti-skimming layer located entirely on an internal surface within the container” that also “retains a layer of formulation without excluding the formulation vapor in the container from contacting the formulation.” Allbrighton, at 1, states “the disc insert prevents air contacting the surface of the paint and thus prevents formation of a skin on the surface of the paint,” which clearly teaches away from this feature in the present claims. Graham teaches a moist pad that can be placed on the membrane of foil, not an anti-skimming layer located entirely on the internal surface of the container. Merritt teaches a membrane that drapes across the formulation itself and only a portion of the anti-skimming layer/membrane is positioned on the inner surface of the container. Given the foregoing, Applicants respectfully submit that claims 65 and 106 are allowable over the prior art of record.

and that all claims dependent therefrom are also allowable as dependent on allowable base or intervening claims.

With respect to independent claim 65, Applicants respectfully submit that not one of Allbrighton, Graham or Merritt teach or suggest “an anti-skinning layer [that] operates to retain a layer of the formulation without excluding the formulation vapor in the container from contacting the formulation.” Accordingly, Applicants request withdrawal of the obviousness rejections of independent claim 65 and all claims dependent therefrom.

CONCLUSION

In view of the foregoing, Applicants request reconsideration and allowance of claims 52-87 and 106-120 in due course. If, in the Examiner's opinion, a telephonic interview would expedite allowance of the claims, the undersigned attorney invites the Examiner to call him at the telephone number given below.

Dated: February 13, 2004

Respectfully submitted,

Timothy J. Keefer
Attorney for Applicants
Reg. No. 35,567

Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Suite 2800
Chicago, Illinois 60606-1229
Telephone: (312) 201-2327
Facsimile: (312) 201-2555
e-mail: keefer@wildmanharrold.com
1255463-1

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